

The TCPA does not include an EBR exemption for faxes, and this is clearly intentional on the part of Congress. Congress was right. Junk faxes have higher costs to recipients than other forms of telephone advertisements. Creating an EBR exemption is probably beyond the FCC's authority; it is certainly a bad idea. An EBR exemption will not do any good to the small companies who have legitimate permission to fax their customers. What it will do is encourage dishonest defendants to claim an existing business relationship, creating additional confusion in court, in the hopes of making TCPA actions too expensive to bring, or tricking a naive judge into ruling incorrectly. I have already seen one company claim the EBR defense even though they have no prior relationship with me; this sort of dishonesty is fairly typical of junk faxers.

People whose customers genuinely want to be on their lists have nothing to fear. People whose customers don't want to be on their lists *should* be in trouble for faxing, and should not be given any kind of free pass for breaking this law.

The TCPA, as written, handles this correctly. Prior express permission or invitation, not any kind of implied permission, is sufficient. There are companies doing quite well sending faxes only to people who have affirmatively expressed their permission. As to the rest, I have no sympathy for them; they have cost me a great deal of time and money, and wrecked my first fax machine. They are liars, and they should not be taken seriously.